

OIC 85-3984

Office of Legislative Liaison
Routing Slip

TO:	ACTION	INFO
1. D/OLL		X
2. DD/OLL		X
3. Admin Officer		
4. Liaison		
5. Legislation	✓	
6. [Redacted]		X
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SUSPENSE

27 JAN 86
Date

Action Officer:

Remarks:

[Redacted] 30 Dec 85
Name/Date

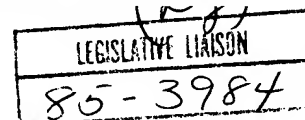


EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

December 26, 1985



LEGISLATIVE REFERRAL MEMORANDUM

SPECIAL

TO: Legislative Liaison Officer-

General Services Administration
Department of Justice
National Security Council
Central Intelligence Agency ✓
Office of Personnel Management
Department of Energy
Department of State

SUBJECT: DOD draft report on H.R. 2994 regarding a security classification and declassification system.

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than MONDAY, JANUARY 27, 1986.

Questions should be referred to Sue Thau (395-7300), the legislative analyst in this office.

Ronald K. Peterson
RONALD K. PETERSON FOR
Assistant Director for
Legislative Reference

Enclosures

cc: B. Howard
C. Wirtz
F. Seidl
A. Donahue



GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D.C. 20301

Honorable Les Aspin
Chairman, Committee on
House Armed Services
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your request for the views of the Department of Defense on H.R. 2994, 99th Congress, a bill, "To amend the National Security Act of 1947 to establish by law a system for the security classification and declassification of sensitive information relating to the national security, to define matters that may be classified, to require the protection of such information that is classified, whether in the executive, legislative, or judicial branches or in industry, to require the imposition of administrative penalties for improper classification of information, to provide criminal penalties for unauthorized disclosure of classified information, and for other purposes."

Over the years, the Department of Defense has had no objection in principle to establishing a national security classification system by law, so long as the Constitutional prerogatives of the President were not encumbered. The Department of Defense believes there are positive benefits to be obtained from enactment of legislation like H.R. 2994.

H.R. 2994 would, among other things, (1) specify that the President issue orders or regulations, binding on the Executive branch, which provide for the classification of information at three levels (Top Secret, Secret, and Confidential); (2) vest security classification authority in the President and others designated by the President; (3) define several categories of information as being classifiable and provide that the President may designate other categories of information that may be classified; (4) provide for the declassification of information by those who authorized the original classification; (5) proscribe classification for certain improper purposes; specifically take cognizance of Presidential responsibilities under article II, section 2 of the Constitution of the United States; (6) provide certain basic, commonly accepted definitions; (7) provide that each branch of Government issue rules for the safeguarding of classified information, with those of the legislative and judicial branches being as similar as possible to those of the executive branch; (8) specify basic safeguarding principles; and (9) provide a criminal penalty for unauthorized disclosure of classified information by employees of the United States.

In many respects, H.R. 2994 is modeled after Executive Order 12356, "National Security Information." For example, the bill defines the three classification levels the same way and treats delegation of classification authority in much the same manner. It specifies the same categories of information that may be classified. The basic declassification principles of Executive Order 12356 are carried forward. The same is true of the basic safeguarding requirements.

H.R. 2994 is distinctive, however, in several other respects. While it limits original classification authority to Executive branch officials, it provides for safeguarding of classified information not only within the executive branch but also within the legislative and judicial branches. This aspect of the bill would achieve a degree of uniformity and assurance of protection of classified information that is absent at the present time. As significant, H.R. 2994 would impose a criminal penalty for the unauthorized disclosure of classified information by a government officer or employee. Prosecution would be conditioned, however, upon a written determination by the cognizant agency head and the Attorney General that the information in question was lawfully classified. While the Department of Defense defers to the Department of Justice with regard to the legal issues raised by this provision, we support, in principle, legislation to achieve the apparent objective of this provision of H.R. 2994.

In conclusion, the Department of Defense supports, in principle, the general objectives of H.R. 2994, and would be pleased to work further with the Committee in bringing about the enactment of legislation in this area.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to presentation of this report.

Sincerely,

Chapman B. Cox